

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 647 of 1996

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHAVSAR KANUBHAI HARIBHAI

Versus

PATEL RANCHHODBHAI JIVRAMDAS

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Appearance:

MR PRANAV G DESAI for Petitioners

MR HM PARIKH for Respondent No. 1

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Date of decision: 12/12/96

ORAL JUDGEMENT

In my view this Civil Revision Application no.647/96 can be disposed of by a brief order. The petitioners are the tenants in respect of the premises of which the respondent is the owner. A suit was filed for eviction of the petitioners on certain grounds which is not necessary to be taken note of for the purpose of disposing of this Revision Application. Finally, the suit was decreed in favour of the respondent with the

result that the eviction of the petitioners was directed from the suit premises.

As against the eviction decree, being aggrieved, the petitioners instituted Regular Civil Appeal no.98/94. It appears that this appeal came on board for hearing on not less than three occasions and at all times the Advocate appearing for the petitioners was absent with the result that the appeal was dismissed on 8th September, 1994. Belatedly after about 150 days the petitioner instituted an application for setting aside the order of dismissal and for restoration of the appeal. The learned Appellate Judge rejected the application for setting aside the restoration as also the supporting application for condonation on 30th March, 1996 on the ground that no sufficient cause has been made out with the result that the petitioners are in this Court in the present Revision Application.

I have heard the learned Counsels for the parties. The expression "sufficient cause" has been advisedly not defined though such expression appears in large number of statutes and, more particularly, in the provisions of the Limitation Act, 1963. Here is admittedly a case where lawyer did not appear on three occasions when the appeal was listed on board but he set out some case which however did not find favour with the Appellate Judge. The fact remains that for failure of the attendance by the lawyer the petitioners cannot be sufferers who are facing a decree of eviction. It is always desirable that parties are allowed to fight their battle on merits. The expression "sufficient cause" must also receive liberal construction and approach by the Court. In any event, inasmuch as the respondent landlord can be compensated in terms of money, in my view, the appellate order dated 8th September, 1994 is liable to be set aside. Accordingly, Civil Misc. Application no.22/95 is allowed and the order of the Appellate Judge dated 30th March, 1996 is set aside and with that the order dated 8th September, 1994 whereby the Regular Civil Appeal no.98/94 was dismissed for default is also set aside with the result that the Regular Civil Appeal no.98/94 is now required to be heard on merits. The petitioners have assured this Court that they will not seek undue adjournments in that appeal. The aforesaid order of restoration of the appeal is made subject to payment of cost of Rs.500/- by the petitioner to the respondent as condition precedent and which shall be paid within eight weeks from today. Revision Application accordingly stands disposed of.

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